

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF MISSOURI
KANSAS CITY DIVISION**

Jody M. Davis

Debtor(s),

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Case: 17-42719 - drd
Chapter 7

DEBTOR'S MOTION TO BORROW FROM 401K

Comes now Jody M. Davis, by and through her undersigned attorney, and for her Motion to Borrow from her 401k to bring home mortgage payments current, states as follows:

1. Debtor filed her Chapter 7 Petition on October 8, 2017.
2. Debtor's home mortgage is one of the debts listed in that Chapter 7 Petition.
3. Debtor is in the midst of a Dissolution of Marriage action now pending in the Circuit Court of Jackson County, Missouri, Case No. 1716-FC06964, filed July 25, 2017, in which debtor is requesting child support and maintenance payments be made to her by her spouse. Debtor's spouse had not paid any child support or maintenance payments to debtor since the Dissolution of Marriage was filed.
4. Due to his failure to provide financial assistance, the Debtor's home mortgage fell behind, and the creditor has filed a Motion for Relief from the automatic stay. Debtor is now approximately \$2,500.00 in arrears in the home mortgage payments.
5. In November 2017, Debtor's spouse finally began making voluntary payments of child support. That Dissolution of Marriage case is set for trial on June 5, 2018. He is not contesting custody of the parties' child.
6. Debtor is requesting to borrow \$7,000.00 in order to bring her home mortgage payments current, and to have money to continue to pay the loan payments as they come due in the future, until a Judgment in the Dissolution of Marriage action is entered and she does not have to rely on her spouse to make voluntary payments of child support.

7. Debtor's interest rate for the 401k loan is 5.25%, and her bi-weekly payments will be approximately \$60.00 for five years.
8. The home is owed as tenants by the entirety with her non-filing spouse, and has substantial equity. Its approximate value is \$95,000.00 and approximately \$56,000.00 is owed. Other than the home mortgage, there are no joint debts of Debtor and her spouse.

WHEREFORE, Debtor prays this Court for its Order allowing debtor to borrow \$7,000.00 from her 401k with an interest rate of 5.25%, to be repaid over five years with bi-weekly payments of approximately \$60.00, and for such other orders as the Court deems just and property.

LAW OFFICE OF JUDITH L. BERRY, L.L.C.

Date: 12/05/17

/s/ Judith L. Berry

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NOTICE OF OPPORTUNITY AND DEADLINE TO OBJECT TO MOTION TO BORROW

PLEASE TAKE NOTICE THAT WITHIN TWENTY- ONE (21) DAYS AFTER THE DATE OF THIS NOTICE you must file and serve a written objection to the motion. The objection must be filed electronically with the Bankruptcy Court at www.ecf.mowb.uscourts.gov. If you are a pro se creditor, you may file a written objection with the Clerk, United States Bankruptcy Court, Western District of Missouri, 400 E. 9th Street, Room 1510, Kansas City, MO 64106. Debtor's attorney and trustee will receive electronic notice when the objection is filed. If the debtor is pro se, you must serve your objection on the debtor.

IF YOU FAIL TO FILE A TIMELY OBJECTION, THE MOTION MAY BE GRANTED BY THE COURT WITHOUT A HEARING. The court may grant the motion without a hearing if the objection filed states inadequate grounds for denial.

Date: 12-5-17

/s/Judith L. Berry

Judith L. Berry

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion has been served on this 5th day of December, 2017 to all creditors as follows: Zachary G. Edwards, SHAPIRO & KREISMAN, LLC, 13801 Riverport Drive, Suite 502, Maryland Heights, MO 63043 zedwards@logs.com, attorney for Nationstar Mortgage, and Jerald S. Enslein, Chapter 7 trustee through the ECF system, and the United States Trustee at USTP.Region13@usdoj.gov and to Linda Smith, 25561 State Highway 5, Wasola MO 65773, and Ralph Drake, 8711 E. 23rd St., Kansas City MO 64123, Bank of America, PO Box 982234, El Paso TX 79998-2234, Bank of America, PO Box 851001, Dallas TX 75285-1001, Carmax, PO Box 440609, Kennesaw GA 30160, by United States First Class Mail, postage prepaid.

Date: 12/05/2017

/s/ Judith L. Berry
Judith L. Berry